

**Suspension of Internal Department Practice Regarding Claim and Requalification
Effective March 15, 2020 through December 31, 2020**

From: Jani Revier
Director, Idaho Department of Labor

Date: June 18, 2020

Re: Suspension of Department Policy Regarding Adjudication of Requalification for Benefits
Under I.C. § 72-1366(14)

Summary

The Department will only adjudicate a claimant's most recent separation from employment (the separation causing unemployment) in determining requalification for unemployment benefits under Idaho Code § 72-1366(14). The Department practice of also examining prior separations occurring during the period a claimant was earning fourteen (14) times their weekly benefit amount – WBA - (referred to as the “look-back policy”) is hereby suspended through December 31, 2020. During this suspension period, requalification under Idaho Code § 72-1366(14) will be based upon whether a claimant has obtained bona fide work and has earned fourteen (14) times their WBA without adjudication of prior separations.

Explanation

A. The Look-Back Policy Is Not Required By the Idaho Code or the Department's Administrative Rules (IDAPA)

Under Idaho Code § 72-1366(14), certain claimants are not eligible for benefits until they reestablish eligibility (or requalify) for benefits. Under this statute, claimants who must requalify for benefits are those who:

- voluntarily quit without good cause;
- were discharged for misconduct in connection with employment;
- failed without good cause to apply for suitable work; or
- failed without good cause to accept an offer of suitable work.

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The operative language of Section 72-1366(14) states these claimants “shall reestablish . . . eligibility by having obtained bona fide work and received wages therefor in an amount of at least fourteen (14) times [their] weekly benefit amount [WBA].”

In making determinations of requalification under Subsection (14), the Department’s practice has been to examine separations from employment that occurred during the period claimant last earned fourteen (14) times their WBA. For example, under this look-back policy, if a voluntary quit occurred during the 14x WBA requalification period, then that prior quit would be examined by an adjudicator to determine whether good cause existed for the quit. This practice can result in adjudication of multiple separations, requiring increased adjudicator claim processing time, and delays in providing claimants their UI benefits.

The Department’s deputy attorney general examined the legal basis for the look-back policy. It is his opinion that neither the Idaho Code nor the Department’s IDAPA regulations mandate adjudication of multiple separations; only the most recent separation causing claimant’s unemployment is required to be adjudicated to determine a claimant’s requalification for benefits.

The text of Section 72-1366(14) sets forth only two pre-conditions for a claimant to requalify:

1. “obtain[ing] bona fide work,” and
2. “receiv[ing] wages therefor in an amount of at least fourteen (14) times his weekly benefit amount.”

The express language of this statute does not require the Department to examine separations that occurred prior to the most recent separation that caused a claimant’s unemployment.

The Department’s administrative rules also do not expressly require the Department to examine prior separations under a look-back policy. Although we have an administrative rule directing adjudicators to send separation notices to employers within the 14x WBA period,¹ neither this rule nor any other rule expressly requires or authorizes the adjudication of prior separations within that period. Admittedly, the rule about sending separation notices to those additional employers presumes that prior separations will be adjudicated. However, there is no rule that expressly requires or authorizes those additional adjudications, or that expressly states that requalification is conditioned on the circumstances of a claimant’s prior separations.

¹ “At the time a claim for benefits is filed, the Department will review the claimant's employment subsequent to which the claimant has not earned fourteen (14) times his weekly benefit amount. The Department will mail a separation notification letter to each employer within that period. . . .” IDAPA 09.01.30.425.10.a

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And, as discussed above, there is nothing in the Employment Security Law requiring those additional adjudications or creating a pre-condition for requalification based on prior separations.

The background of the Department's practice of adjudicating prior separations within the 14x WBA period no longer supports the view that the look-back policy is required or authorized by law. In 2003, the policy was reviewed and upheld by the Idaho Supreme Court in the the case of *Ewins v. Allied Security*.² At the time of this court decision, there was a legal basis for the Department's look-back policy in its administrative rules. One of its rules, IDAPA 09.01.30.010.013, defined employment as "[f]or the purpose of the personal eligibility conditions of Section 72-1366(5), Idaho Code, 'employment' means that employment subsequent to which a claimant has not earned twelve (12) times his weekly benefit amount." Based upon this definition of "employment," eligibility for benefits required an examination of prior separations. However, this rule has since been removed from IDAPA for unknown reasons. Thus, the legal basis relied upon by the Supreme Court in *Ewins v. Allied Security* to uphold the Department's look-back policy no longer exists. This is something the Department may need to address in the future by rule, or by seeking an amendment to the Employment Security Law.

B. Significant Public Policy Reasons Exist for Temporarily Suspending the Look-back policy

On June 11, 2020, the Governor issued Executive Order No. 2020-11. In that order, the Governor outlined the circumstances related to the COVID-19 pandemic that supported his declaration of a disaster pursuant to Idaho law. This order included important directives to the Department of Labor:

To effectuate the purposes of this Order, the Idaho Department of Labor shall interpret flexibly, and may suspend where appropriate to the fullest extent allowed by federal law, non-jurisdictional procedural requirements of the Employment Security Law and provisions of its rules not expressly included in the Employment Security Law.

The significant public policy interest in timely processing of unemployment insurance claims will be furthered by the suspension of the look-back policy. The policy suspension is needed to respond to the impacts COVID-19 has had on Department resources because of the substantial increase in the number of claims and the complexities of implementing not less than three entirely new federal benefits programs.

² *Ewins v. Allied Security*, 138 Idaho 343, 63 P.3d 469 (2003).

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The suspension of the look-back policy also is in furtherance of a USDOL directive to the states, as a condition to receipt of federal funds. The Emergency Unemployment Insurance Stabilization and Access Act of 2020 requires states to demonstrate “steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants.”³ Suspending the look-back policy will ease eligibility requirements and access to unemployment benefits.

Finally, there is a need to address the removal of IDAPA 09.01.30.010.013 from the Department’s administrative rule, which was the legal basis for the look-back policy. In light of the fact that states employ a wide variety of requalification rules, the review of the Department’s look-back policy should encompass an examination of all requalification standards. The suspension of the look-back policy will allow the Department to undertake a more thorough review of Idaho’s requalification standards.

C. Conclusion

Based on these legal considerations and the strong public policy interests described, the Department practice of examining separations occurring prior to a claimant’s most recent separation, and during the period the claimant was earning fourteen (14) times their weekly benefit amount, is hereby suspended through December 31, 2020.

DATED and effective this 18th day of June, 2020.



Jani Revier
Director, Idaho Department of Labor

³ 42 U.S.C. § 1103(h)(3)(B).